Supreme Court, U.S.
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No. 03-183

In The
Supreme Court of the United States

JESSE WOODROW SHOTTS,

Petitioner,

v.

MICHAEL RASMUSSEN, YVONNE ALEXANDER, RON MOSES, RODNEY ROBINSON, CYNTHIA MCGOUGH, DR. LUIS A. BERRIOS, JENNIFER MERKEL, LARRY SPENCER, ERIC DRYDEN, DEBRA RANKIN, RANDY STILES, MS. BLANKENSHIP, LT. W. HUTCHINGS, C. THOMPSON, alias BLACK WIDOW, DR. GEORGE HILL, ONORIO DELA CRUSE, ART DIZON, WARDEN R. WILEY and DR. CARLA THOMAS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION FOR RESPONDENT DR. GEORGE HILL

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QUESTION PRESENTED

1. Whether this Court should grant a writ of certiorari in this case, which is based on allegations that a doctor who treated a prison inmate pursuant to a contract with the prison authorities should be held liable for Eighth Amendment violations for allegedly prescribing medication and other treatment that the prisoner believed was inadequate, and for allegedly communicating to the prison authorities a fraudulent diagnosis.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Respondents respectfully submit this Corporate Disclosure Statement.

No publicly held company is involved in this litigation.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
BRIEF IN OPPOSITION FOR RESPONDENT	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	1
REASONS FOR DENYING THE WRIT	2
I. The Petition Fails to Set Out Reasons Justifying a Grant of Certiorari in this Matter	2
A. Even Taking the Petitioner's Allegations as True, the Petitioner Has Failed to State a Constitutional Claim Against Respondent Dr. Hill	2
CONCLUSION	7

TABLE OF AUTHORITIES

Page

CASES

Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285 (1976) ..3, 4, 5, 6

Whitley v. Albers, 475 U.S. 312, 106 S.Ct. 1078 (1986) 5, 6

CONSTITUTION AND STATUTES

U.S. Const., Amend. VIII 3, 4

42 U.S.C. § 1983 1

42 U.S.C. § 1985 1

Supreme Court Rule 10 2

BRIEF IN OPPOSITION FOR RESPONDENT

Respondent, Dr. George Hill (hereinafter "Dr. Hill") submits that the Petition for Writ of Certiorari ("Pet.") filed by Petitioner is due to be denied.

STATEMENT OF THE CASE

Dr. Hill respectfully advises this Court that the Petition mischaracterizes the facts of this case. In particular, the Petitioner claims that "the medical staff [presumably including Dr. Hill] refused to treat the [Petitioner's] severe back injury and sent numerous letters denying the severity of the injury, including a letter to the prosecutor to be used at re-sentencing." (Pet. at 2). As the record in this case shows, and as the Petitioner's pleadings to the Courts below illustrate, Dr. Hill did not refuse to treat the Petitioner; he merely diagnosed the Petitioner with a condition less serious than the one the Petitioner believed he had, and prescribed a treatment that the Petitioner believed dealt inadequately with his symptoms.

The Petitioner failed to set out in his Statement of the Case to this Court that both the district court and the Court of Appeals for the Eleventh Circuit found that the Petitioner completely failed to state any claim under 42 U.S.C. § 1983, 42 U.S.C. § 1985, or the Racketeer Influenced and Corrupt Organizations Act.

SUMMARY OF THE ARGUMENT

The Petitioner has failed to set out circumstances that would justify the issuance of a writ of certiorari in this

matter. The allegations he makes against Respondent Dr. George Hill amount to state law claims of malpractice and fraud rather than constitutional violations, and should more properly be addressed in a state court.

REASONS FOR DENYING THE WRIT

I. The Petition Fails to Set Out Reasons Justifying a Grant of Certiorari in this Matter.

This Court does not ordinarily grant a writ of certiorari to review the decision of a United States court of appeals unless the Petition alleges either that the decision conflicts with decisions of other circuits, that it conflicts with a decision by a state court of last resort, or that the court "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory powers." *S.Ct.R. 10(a)*. The Petitioner has failed to allege circumstances showing that this matter meets any of the Court's criteria.

A. Even Taking the Petitioner's Allegations as True, the Petitioner Has Failed to State a Constitutional Claim Against Respondent Dr. Hill.

The only allegations made by the Petitioner that could refer to Dr. Hill are that Dr. Hill, as part of the medical staff at Talladega Prison Camp "fraudulently communicated the medical condition of the Plaintiff to the warden and the Assistant United States Attorney." (Pet. at 3). The Petition also alleges that the Plaintiff's placement in the Segregated Housing Unit, where he allegedly slept on a

concrete floor, caused "the unnecessary and wanton infliction of pain . . . " *Id.* Although the Petition does not show who ordered that the Petitioner be placed in the Segregated Housing Unit, the Petitioner's complaint does not allege that Dr. Hill had any part in the decision. The Respondent, Dr. Hill, does not deny that the government, whether through its own employees or through non-governmental physicians, must provide medical care to prisoners. Dr. Hill denies that the Petitioner has alleged conduct on the part of Dr. Hill that evinces "deliberate indifference" to the Petitioner's medical needs. In *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 290 (1976), this Court found that the government had an "obligation to provide medical care for those whom it is punishing by incarceration." The Court held "that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment . . . Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under Section 1983." *Id.* at 104, 205, 291 (citing *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed. 2d 859 (1976) (footnotes and additional citations omitted). However, the Court also stated:

> This conclusion does not mean, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment. An accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction of unnecessary pain . . . Similarly, in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute "an unnecessary and wanton infliction of pain" or to be "repugnant to the conscience of mankind." Thus, a complaint that a physician

> has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment. *Estelle*, 429 U.S. at 105-106, 97 Sup.Ct. at 291-92.

The record in this case shows that the Petitioner's allegations against Dr. Hill amount, at most, to state law claims of either malpractice or fraud. The Petitioner alleged that he had a severe back injury, specifically a herniated disk. According to the Petitioner's Complaint and Amended Complaints, Dr. Hill, by not prescribing the amount of pain medication, therapy, or exercise the Petitioner believed was required, was part of a "conspiracy" to reduce medical costs and thereby increase the income of unspecified defendants. The Petitioner essentially states that he disagreed with Dr. Hill's recommendations for treatment. A disagreement over proper treatment or diagnosis of an alleged medical condition does not rise to the level of a constitutional violation. The Petitioner states, if anything, that Dr. Hill committed malpractice by providing incorrect or inadequate medical treatment. Malpractice is a state law cause of action. This Court's decision in *Estelle* plainly foreclosed an inmate's resort to claims of Eighth Amendment violations for simple medical malpractice. As this Court firmly found in *Estelle*, medical malpractice, although it may have serious consequences for the patient, cannot rise to the level of a constitutional

violation, despite the fact that the alleged malpractice occurred in a prison setting.

The Petitioner's conspiracy claim as stated against the Respondent, Dr. Hill, similarly fails to reach the level of a constitutional violation. The Petitioner's complaint further alleged that Dr. Hill conspired with other physicians and the warden to prescribe insufficient pain medication, therapy, and exercise. The Petitioner's claims are virtually identical to those of the prisoner in *Estelle*, *supra*. There, the prisoner, Gamble, contended that "his complaint [was] 'based solely on the lack of diagnosis and inadequate treatment of his back injury.' The doctors diagnosed his injury . . . [but] Respondent contend[ed] that more should have been done by way of diagnosis and treatment, and suggest[ed] a number of options that were not pursued." *Estelle*, 429 U.S. at 107, 97 S.Ct. at 292-93. (Internal citations omitted). This Court stated that "the question whether . . . additional diagnostic techniques or forms of treatment is indicated is a classic example of a matter for medical judgment. A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice . . . " *Id.* at 107, 293.

In this case, as well, the Petitioner seeks to hold the Respondent, Dr. Hill, liable under federal constitutional law for what is at heart a difference of opinion with respect to diagnosis and treatment. This Court's precedents hold that resolution of such a difference of opinion must be resolved through the state courts by means of state malpractice law.

The Petitioner's allegations against Dr. Hill fail to meet the definition of "deliberate indifference." In *Whitley*

v. Albers, 475 U.S. 312, 319, 106 S.Ct. 1078, 1084 (1986), this Court stated that:

> To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety. This reading of the Clause underlies our decision in *Estelle v. Gamble*, *supra*, at 105-106, 97 S.Ct. at 291-292, which held that a prison physician's "negligen[ce] in diagnosing or treating a medical condition" did not suffice to make out a claim of cruel and unusual punishment. It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause, whether that conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring official control over a tumultuous cell block.

The Petitioner made no allegations against Dr. Hill that would rise to the level of "obduracy and wantonness." The Petitioner alleged that Dr. Hill did not prescribe medications and other treatment that, in the Petitioner's opinion, would adequately treat his medical condition. That inadequacy, even if true, would not qualify as "deliberate indifference."

To the extent that the Petitioner alleges that Dr. Hill knew that the Petitioner had a severe back injury and "fraudulently" communicated a different diagnosis to prison authorities, that claim also fails to rise to the level of a constitutional violation. Again, the Petitioner has, if anything, stated a state law claim for fraud. The Petitioner has failed to show how an alleged misrepresentation

concerning his medical condition could be a constitutional violation.

The district court and the Court of Appeals for the Eleventh Circuit correctly found that the Petitioner had failed to state a claim for which relief could be granted.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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